

Chapter 25.200 - Inclusionary Housing Program

Sec. 25.200.010. – Chapter Description

Chapter 25.200 establishes an Inclusionary Housing Program and procedures for implementing inclusionary housing as part of new residential development.

Sec. 25.200.020. - Purpose and intent

- A. Ensure the development and availability of decent, affordable housing to a broad range of households with varying income levels throughout the City.
- B. Promote the City's goal to add affordable dwelling units to the City's housing stock.
- C. Ensure the long-term affordability of dwelling units and availability for eligible households in years to come.
- D. Ensure that the private sector, in addition to public sector, participates in the provision of affordable housing for workers within the City of San Buenaventura.
- E. Ensure that affordable housing will be dispersed throughout the City and each residential development, and not segregated from market-rate housing, by adopting the inclusionary housing requirement for each applicable residential development.

Sec. 25.200.030. - Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. *Affordable Housing Agreement.* A legally binding agreement between an owner, an applicant (if not the owner), and the City, a Declaration of Restrictions or other equivalent documents, in a form and substance satisfactory to the Director and City Attorney and suitable for recording, and setting forth those provisions necessary to ensure that the requirements of this Chapter are, and will continue to be, satisfied and otherwise meeting the requirements of this Chapter.
- B. *Affordable Housing Cost.* A sales price that results in a monthly housing cost (including mortgage, insurance, utilities, rubbish collection costs and home association costs, if any) that does not exceed the amounts specified in Health and Safety Code Section 50052.5, subsection (b)(2)—(4).
- C. *Affordable Rent.* Affordable rent has the same meaning as specified in Health and Safety Code Section 50053.
- D. *Community Development Director.* The City of San Buenaventura Community Development Director or designee.
- E. *Eligible Household* means any of the following as applicable:
 - 1. *Eligible Moderate-Income Household.* A household whose income does not exceed the qualifying limits set for "persons and families of low- or moderate-income" in Health and Safety Code Section 50093.
 - 2. *Eligible Low-Income Household.* A household whose annual income does not exceed the qualifying limits set for "lower income households" in Health and Safety Code Section 50079.5.
 - 3. *Eligible Very Low-Income Household.* A household whose income does not exceed the qualifying limits set for "very low-income households" in Health and Safety Code Section 50105.
- F. *Eligible Organization.*

1. A government entity; or
 2. A nonprofit corporation or nonprofit organization, or charitable organization as defined by applicable state or federal law.
- G. *Household*. One person living alone, or two or more persons sharing residency, whose income is considered for housing payments.
- H. *Inclusionary Unit*. A dwelling unit that is designated to meet the inclusionary housing requirement, and that must be made available at an affordable cost to eligible households. Inclusionary units may include ownership or rental units.
- I. *Market-rate Unit*. A dwelling unit in a residential development that is not an inclusionary unit.

Sec. 25.200.040. – Inclusionary housing requirement

- A. Development projects consisting of 7 or more dwelling units shall provide and designate at least 15 percent of the total dwelling units as inclusionary units, or 20 percent of the total dwelling units as inclusionary units when the inclusionary units are provided via rehabilitation, acquisition, or preservation per Section 25.200.090(E).
- B. Targeted income group for the inclusionary units is 15 percent low income households for rental housing and moderate income households for ownership housing. At the discretion of the project developer and with the approval of the City, the project can choose to provide a deeper level of affordability.
- B. For purposes of calculating the number of inclusionary units required, any additional dwelling units authorized as a density bonus under the City Density Bonus Ordinance or State law will not be counted in determining the required number of inclusionary units.
- C. Any fractional number of inclusionary units required in a residential development, shall be provided by payment of an in-lieu fee in the amount determined pursuant to Section 25.200.090(A) of this Chapter.

Sec. 25.200.050. – Exemptions.

The requirements of this Chapter do not apply to:

- A. Residential developments of 6 dwelling units or less.
- B. Residential units constructed pursuant to the City's Accessory Dwelling Unit (ADU) provisions as set forth in Chapter 24.430.
- C. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of dwelling units by 7 or more.
- D. Residential building additions, repairs or remodels; provided that such work does not increase the number of existing dwelling units by 7 or more.
- E. Developments that already have more dwelling units that qualify as affordable to eligible households than this Chapter requires.

Sec. 25.200.060. – Inclusionary housing standards.

- A. Timing of construction. Inclusionary units shall be constructed and occupied concurrently with or prior to the construction and occupancy of market-rate units. In phased developments, inclusionary units may be constructed and occupied in proportion to the number of dwelling units in each phase of the development.
- B. Location. Inclusionary units shall be dispersed throughout a residential development and not clustered in a particular area of the development. Inclusionary units within developments that share a common entrance shall not have separate entrances for market-rate and inclusionary units.

- C. Design. Inclusionary units shall be comparable in design to market-rate units, with comparable infrastructure (including sewer, water, and other utilities), construction quality, and exterior design. The number of bedrooms in inclusionary units shall be equivalent to the number of bedrooms in corresponding market-rate units, but the inclusionary units may be smaller in size than the market-rate units. Inclusionary units may have different interior finishes and features than market-rate units, so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing, such as those applied by the Low Income Housing Tax Credit program.
- D. Access to common amenities. Residents of inclusionary units shall have the same rights and access to common amenities in the development, such as parking, open space, storage, and recreational space, as residents in market-rate units.

Sec. 25.200.070. – Incentives and Assistance.

- A. Other incentives. Depending on the number of inclusionary units provided, an applicant may be eligible for one or more other regulatory incentives set forth in section 24.445 of this Code as it may be amended from time to time.

Sec. 25.200.080. – Compliance Procedures.

No residential development subject to this program shall be approved without approval of an Inclusionary Housing Plan and an Affordable Housing Agreement as follows:

- A. Inclusionary Housing Plan.
 - 1. The applicant for a residential development subject to this chapter shall submit a Inclusionary Housing Plan in conjunction with its application for any development permit required by Division 24 (Zoning Regulations) or any Specific Plan or Community Plan adopted by the City Council.
 - 2. The Inclusionary Housing Plan shall include an acknowledgement that a recordable Affordable Housing Agreement shall be entered into by the applicant, owner (if not the applicant), and any other necessary party, and that resale restrictions, deeds of trust, and related documents may be recorded against inclusionary units.
 - 3. The Inclusionary Housing Plan shall be submitted on a separate plan sheet, and shall include all necessary information to evaluate the plan for compliance with the requirements of this Chapter, including a phasing plan for phased developments.
 - 4. If the Inclusionary Housing Plan is deemed incomplete, the Inclusionary Housing Plan will be returned to the applicant, along with a list of the deficiencies or the information required for completion.
- B. Community Development Director Decision.
 - 1. In conjunction with the processing of any discretionary approvals, the Community Development Director shall approve, conditionally approve, or reject the Inclusionary Housing Plan within 60 days of the date that the Inclusionary Housing Plan is deemed complete by the Community Development Director.
 - 2. A rejected Inclusionary Housing Plan may be resubmitted when and if the defects cited by the Community Development Director as reasons for rejection are corrected.
 - 3. An application for discretionary approvals for a residential development subject to this ordinance will not be deemed complete until a complete Inclusionary Housing Plan is submitted to the City.
 - 4. At any time during the review process, the Community Development Director may require from the applicant to submit additional information reasonably necessary to

clarify and supplement the Inclusionary Housing Plan or determine the consistency of the Inclusionary Housing Plan with the requirements of this ordinance.

C. Affordable Housing Agreement

1. Form. The forms of the Affordable Housing Agreement and any related declarations, resale restrictions, deeds of trust, and other documents authorized by this section shall be in a general form as prescribed by the City. The forms shall be approved by the Community Development Director, and approved as to form by the City Attorney, prior to being executed with respect to any residential development subject to this Chapter.
2. Recording. Affordable Housing Agreements approved by the City shall be recorded against inclusionary units prior to the issuance of any building permit for the development. Resale restrictions, deeds of trust, and/or other documents comprising or related to the Affordable Housing Agreements specified by the Community Development Director shall also be recorded against ownership inclusionary units.

D. Building permits. The City shall not issue a building permit for a residential development subject to this program without an Affordable Housing Agreement executed by the owner, the applicant (if not the owner) and the City Manager, and approved as to form by the City Attorney, and recorded against the property.

E. Implementation and compliance monitoring fees

1. The City Council may, by resolution, establish fees and deposits for the reasonable cost of preparing documents and processing applications as required for the inclusionary housing program established pursuant to this Chapter.
2. The City Council may, by resolution, additionally establish compliance monitoring fees to recover the City's reasonable costs for ongoing implementation of this Chapter. The City Council shall establish separate compliance monitoring fees for ownership and rental inclusionary units.

Sec. 25.200.090. – Alternative Compliance Procedures.

A. In-Lieu Fees

1. The payment of in-lieu fees may be used to satisfy the inclusionary housing requirement for the following residential developments:
 - a) Any fractional number of inclusionary units required in a residential development.
 - b) Ownership developments.
 - c) Rental developments with 20 or fewer dwelling units.
 - d) Rental developments with more than 20 dwelling units, provided the decision-making authority for the development finds that constructing the required inclusionary units on site would be an extreme hardship, based on factors such as project size, site constraints, and/or excessively large affordability gaps. One manner in which this can be achieved is for the developer to demonstrate that the imposition of the affordable housing production requirement would violate the California and/or United States Constitutions.
2. In-lieu fees shall be paid according to a fee schedule adopted by the City Council, and adjusted annually based on the percentage change in new home prices and average apartment rent increases in Ventura County.

3. In-lieu fees shall be paid prior to the issuance of the first building permit for the development. For phased developments, the developer may pay a pro rata share of the in-lieu fee concurrently with the issuance of building permits for each development phase.

B. Off-site Construction

The inclusionary housing requirement may be satisfied by the construction of inclusionary units off site as follows:

1. Irrespective of whether the market-rate units are ownership units or rental units, the inclusionary units constructed off site shall be rental units for eligible very low-income households.
2. Off-site construction of Accessory Dwelling Units (ADUs) shall not qualify as off-site inclusionary units.
3. Location of off-site inclusionary units:
 - a) The off-site inclusionary units shall be located within one-half mile of the market-rate development that is subject to the inclusionary housing requirement, unless the units are located within a moderate or higher resource area as defined by the California Tax Credit Allocation Committee (TCAC) Opportunities Mapping.
 - b) The development shall not create an overconcentration of deed-restricted affordable dwelling units in any specific neighborhood, unless the units are located within a moderate or higher resource area as defined by the California Tax Credit Allocation Committee (TCAC) Opportunities Mapping.
 - c) Overconcentration is defined as more than 50 deed-restricted dwelling units for eligible very low-or low-income within $\frac{1}{4}$ mile of the land, or more than 200 deed-restricted dwelling units for eligible very low-or low-income households within $\frac{1}{2}$ mile of the land.
4. Building design, quality, and maintenance standards shall be of good quality and consistent with contemporary standards for new housing, such as those applied by the Low Income Housing Tax Credit program.
5. The number of bedrooms in the off-site inclusionary units is not required to be equivalent to the number of bedrooms in the market-rate development. However, the off-site inclusionary units shall meet the following requirements:
 - a) No more than 15 percent of the off-site inclusionary units shall be studios.
 - b) At least 40 percent of the off-site inclusionary units shall include two or more bedrooms.
6. A market-rate developer may enter into an agreement with an affordable housing developer to construct, own and operate the off-site inclusionary units required to fulfill the inclusionary housing requirement, provided:
 - a) The affordable housing developer is approved by the City.
 - b) The affordable housing developer has recent relevant experience.
 - c) The affordable housing developer does not request any financial assistance from the City.
 - d) The inclusionary units are constructed prior to or concurrently with the market-rate development that triggered the inclusionary housing requirement. For phased developments, the inclusionary units shall be completed during the first phase of the market-rate development.

- e) The affordable housing developer may apply to use the California Government Code Sections 65915-65918 (Section 65915) density bonus and the statutorily established number of incentives or concessions.

C. Land Dedication

At the discretion of the decision-making authority for the development, the inclusionary housing requirement may be satisfied by the dedication of land as follows:

1. The land shall be conveyed to the City at no cost.
2. Payment in full of all property taxes and special taxes shall be made when the proposal for land dedication is submitted, and again prior to conveyance of the land to the City.
3. The inclusionary units constructed on the land shall be rental units affordable to eligible very low-income households.
4. Location of units:
 - a) The land to be dedicated shall be located within 1 mile of the market-rate development that is subject to the inclusionary housing requirement, unless the units are located within a moderate or higher resource area as defined by the California Tax Credit Allocation Committee (TCAC) Opportunities Mapping.
 - b) The inclusionary units constructed on the land to be dedicated shall not create an overconcentration of deed-restricted affordable dwelling units in any specific neighborhood, unless the units are located within a moderate or higher resource area as defined by the California Tax Credit Allocation Committee (TCAC) Opportunities Mapping.
 - c) Overconcentration is defined as more than 50 deed-restricted dwelling units for eligible very low-or low-income within $\frac{1}{4}$ mile of the land, or more than 200 deed-restricted dwelling units for eligible very low-or low-income households within $\frac{1}{2}$ mile of the land.
5. Upon submittal of a proposal for land dedication, evidence shall be provided that:
 - a) The developer has control of the land to be dedicated.
 - b) The land to be dedicated is free of any liens.
 - c) The developer has disclosed any encumbrances or easements that adversely impact the land's title, and these have been factored into the estimated value of the land dedication.
 - d) The land to be dedicated does not contain any hazardous materials, and:
 - i. The developer has disclosed whether any hazardous materials were previously contained on the site.
 - ii. If any hazardous materials were previously remediated on the site, the developer has provided evidence that cleanup was performed in accordance with applicable law.
 - e) The land has not been improved with any residential use for at least five years prior to the submission of the land dedication proposal.
 - f) The land's existing General Plan and Zoning allows for residential use at a density sufficient to permit the development of the required number of inclusionary units.

- g) The land is suitable in terms of size, configuration, and physical characteristics to allow cost-efficient development of the required number of inclusionary units.
- h) The land is fully served by the necessary infrastructure to support the required number of inclusionary units
- 6. The developer shall submit all necessary information to evaluate the proposal for compliance with the requirements of this Chapter.
- 7. City staff shall review land dedication proposals prior to consideration by the decision-making authority, to ensure they meet the requirements of this Section.

D. Rehabilitation, Acquisition, and Preservation

At the discretion of the decision-making authority for the development, the inclusionary housing requirement may be satisfied by the rehabilitation, acquisition, or preservation of dwelling units as follows:

- 1. The inclusionary units shall have long-term affordability covenants and restrictions that require them to be available to, and occupied by, very low-income households for at least 55 years or the time period required by any applicable federal or state law or regulation.
- 2. The rents charged for the inclusionary units shall be the lesser of the California Health and Safety Code Section 50053 rents.
- 3. The developer shall commit an identified amount of financial assistance to the rehabilitation, acquisition, or preservation.
- 4. The developer shall demonstrate that the inclusionary units meet the requirements of California Government Code Section 65583.1(c)
- 5. If there are more dwelling units in the development than are required to fulfill the inclusionary housing requirement, those dwelling units may be rented at unrestricted market-rate rents.

Sec. 25.200.110. – Restrictions on Ownership units

- A. The developer shall designate and offer ownership inclusionary units to eligible households based on the Inclusionary Housing Plan.
- B. Sale and resale
 - 1. The initial sales price and resale price of ownership inclusionary units shall be set to an affordable housing cost calculated by the City on the first day of each calendar quarter.
 - 2. A resale restriction shall be entered into on each change of ownership to maintain the household income restriction on the ownership inclusionary unit for at least 45 years.
- C. Transfer of Title
 - 1. Upon the death of an owner of an ownership inclusionary unit, title in the inclusionary unit may transfer to the surviving joint owner without respect to the income-eligibility of the household. Upon the death of a sole owner or all owners, and inheritance of the inclusionary unit by a non-income-eligible child or stepchild of one or more owners, there will be a one-year compassion period between the time when the estate is settled and the time when the inclusionary unit must be sold to an eligible household. Inheritance of an inclusionary unit by any other person whose household is not income-eligible shall require resale of the inclusionary unit to an eligible household as soon as is feasible but not more than 180 days from when the estate is settled.

D. Owner Occupancy

1. Owners of inclusionary units shall use and occupy the inclusionary unit as the owner's principal residence for at least 10 months out of any 12-month period, or as determined appropriate by the Community Development Director.
2. Owners shall not lease or rent any part of the inclusionary unit unless the City has given its prior written consent to such lease or rental on the basis of a demonstrated hardship by the owner.

E. Annual Report.

1. The City may require owners of inclusionary units to provide an annual written report with information to certify continuing occupancy, as well as additional information deemed reasonably necessary by the City.

Sec. 25.200.110. – Restrictions on rental units

- A. The developer shall designate and offer rental inclusionary units to eligible low- and very low-income households based on the Inclusionary Housing Plan.
- B. The maximum allowable rent of inclusionary units will be affordable rents established by the City on an annual basis.
- C. The household income restriction on rental inclusionary units shall be maintained at least 55 years. At the end of the 55 year term, the household income restriction may only be removed in the event that the property upon which the rental inclusionary unit is located is rezoned and used for a non-residential use.
- D. The owner of rental inclusionary units shall certify each tenant household's income to the City or designee at the time of initial rental. The owner shall obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.
- E. The owner shall submit an annual report summarizing the occupancy of each rental inclusionary unit for the year and demonstrating the continued income-eligibility of the tenant. The City may require additional information if deemed necessary.
- F. Changes in tenant income.
 1. If the income of a tenant of eligible very low-income rental inclusionary unit changes to exceed the very-low income limit, but not the low-income limit:
 - a) The owner may allow the tenant to remain in the original unit at the affordable rent for low-income households, provided the next vacant rental unit shall be redesignated as an inclusionary rental unit for eligible very low-income households; or
 - b) The tenant shall be given one year's notice to vacate the unit. If during the year, an inclusionary unit affordable to low-income households becomes available, the owner shall allow the tenant to submit an application for that unit.
 2. If the income of a tenant of eligible low-income rental inclusionary unit changes to exceed the income limits for that unit:
 - a) The owner may raise the tenant's rent to market rate and allow the tenant to remain in the original unit, provided another unit in the development is redesignated as an inclusionary rental unit affordable to eligible very low- or low-income households within one year.

- b) If the owner does not want to redesignate another unit as an inclusionary rental unit, the tenant shall be given one year's notice to vacate the unit.

G. Condominium Conversions

1. A developer or eligible organization may convert rental inclusionary units to ownership inclusionary units as follows:
 - a) Rental developments that include a tentative map for future conversion to ownership units may pay in-lieu fees for ownership inclusionary units at the time of map approval.
 - b) Existing rental inclusionary units may be maintained with Affordable Rents, while market-rate rental units convert to ownership units.
 - c) Relocation benefits may be provided to tenants in the rental inclusionary units, and converted units may be offered for sale at an affordable housing cost to eligible moderate-income households.
2. In the event a developer or eligible organization wishes to change the initial designation of a rental inclusionary unit to an ownership inclusionary unit for the purposes of offering the inclusionary unit for sale, the City must be sent notice, and must have acknowledged said notice prior to the inclusionary unit being offered for sale.

Sec. 25.200.120. – Adjustments and Waivers.

- A. The requirements of this Chapter may be modified or waived if the applicant demonstrates to the Community Development Director that applying these requirements, considered together with any variances, or regulatory concessions or incentives that may be applied to the proposed development, would take property in violation of the United States or California Constitutions.
- B. Any adjustments or waivers may only modify the inclusionary housing requirement to the extent necessary to avoid an unconstitutional result. If the Community Development Director determines no violation of the United States or California Constitutions would occur through application of this Chapter, the requirements of this Chapter shall remain applicable.
- C. Applications and Decisions
 1. The Community Development Director shall review the application and issue a written decision.
 2. In making a determination on the requested adjustment or waiver, the decision-maker shall consider each of the following:
 - a) Application of the inclusionary housing requirement to the residential development;
 - b) Application of any applicable inclusionary or density bonus concessions or incentives;
 - c) Utilization of the most cost-efficient product type for the inclusionary units; and
 - d) The potential for external funding, including but not limited to, governmental grants, loans, or subsidies of any nature where reasonably likely to occur.
- D. Appeals. Determinations and decisions made pursuant to this Chapter may be appealed to the City Council in the manner and within the time set forth in Chapter 24.565.

Sec. 25.200.130. – Administration and Enforcement

A. Program administration

1. The City Manager and the Community Development Director are hereby given authority to initiate any administrative procedures required to implement the purpose and intent of this Chapter.

B. Legal action

1. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including:
 - a) Actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval.
 - b) Actions to recover from any violator of this Chapter, civil fines, restitution to prevent unjust enrichment from a violation of this Chapter, and/or enforcement costs, including attorneys' fees.
 - c) Eviction or foreclosure.
 - d) Any other appropriate action for injunctive relief or damages.
 - e) Failure of any city official, employee, or agent to fulfill the requirements of this Chapter shall not excuse any person, owner, household, or other party from the requirement of this Ordinance.